IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.1544/2003

Lodkya S/o Laxminarayan
Versus
The State of Rajasthan through the PP

Date of Judgment :::: 17th May, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Harendra Singh and
Shri Kartar Singh Faujdar, Counsel for accused-appellant
Shri B.N. Sandu, P.P., for the State

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By the Court:-

The matter has come-up for orders on the second application for suspension of sentence of the accused-appellant on the ground that the appellant has already remained in jail for about four years, but, during the course of arguments on the application for suspension of sentence, the learned counsel for the appellant contended that final arguments in the appeal itself may be heard and the same may be disposed of. The learned Public Prosecution has no objection in case the appeal itself is heard and disposed of finally.

With the consent of the learned counsel for both the parties, final arguments in the appeal have been heard and the same is being disposed of by this

judgment.

The Additional Sessions Judge (Fast Track) No.1, Bundi, vide its judgment and order dated 17th October, 2003, in Sessions Case No.73/2003, has convicted and sentenced the accused-appellant Lodkya S/o Laxminarayan under Section 376 (2) of the Indian Penal Code, to undergo 10 years rigorous imprisonment and a fine of Rs.5,000/-; in default of payment of fine, to further undergo 3 months additional simple imprisonment.

The learned counsel for the accused-appellant argued the case on merits but, during the course of arguments, he rightly did not press the appeal on merits in view of the statement of PW-3 Ghisi Bai, the prosecutrix, whose statement is corroborated by her medical-report (Exhibit P-1) and the statement of PW-1 Dr. Chhotulal Dadhich.

The prayer of the learned counsel for the appellant is that the appellant has already remained in jail for about four years and the total sentence of imprisonment awarded against him by the trial court is 10 years RI and, therefore, his sentence of imprisonment may be reduced to a period of imprisonment already undergone by him keeping in view the fact that the prosecutrix was 27 years of age at the time of occurrence and there are number of

contradictions in her statement also.

The learned counsel for the State opposed the prayer of the learned counsel for the appellant.

I have considered by submissions of the learned counsel for both the parties.

The learned counsel for the appellant has not challenged the order of conviction in view of the statement of PW-3 Ghisi Bai, the prosecutrix, whose statement is further corroborated by her medical-report (Exhibit P-1) and the statement of PW-1 Dr. Chhotulal Dadhich, therefore, it is not necessary to refer and discuss the facts of the case in detail.

I have considered the submissions of the learned counsel for the appellant as well as other facts and circumstances of the present case and after considering the same, I find that the learned counsel for the appellant is right in not pressing the appeal on merits in view of the statement of PW-3 Ghisi Bai, the prosecutrix, whose statement is further corroborated by her medical-report (Exhibit P-1) as well as the statement of PW-1 Dr. Chhotulal Dadhich. However, in view of the statement of the prosecutrix and the contradictions pointed out therein by the learned counsel for the appellant, which were not fatal to prosecution case but certainly they were relevant to award lesser sentence, and also the other facts and circumstances of the case, I find it to be a fit case

to reduce the sentence of imprisonment of the appellant awarded by the trial court.

In Prem Chand Vs. State of Haryana, AIR 1989 SC 937, in the peculiar facts and circumstances of that case, the Hon'ble Supreme Court reduced the sentence of imprisonment of ten years awarded under Section 376 (2) IPC, to a period of sentence of imprisonment of five years. The State of Haryana filed review petition before Hon'ble the Supreme Court in the above case and the same was dismissed. The decision of the Hon'ble Supreme Court in that review petition is reported in (1990) 1 SCC 249 (State of Haryana v. Prem Chand & Others).

In Ram Kumar Vs. State of Haryana – (2006) 4 SCC 347, their Lordships of the Hon'ble Apex Court reduced the sentence of seven years under Section 376, IPC, to a period of three years imprisonment. Para No.3 of the judgment reads as under:-

> "3. The appellant, aggrieved by the order passed by the High Court has filed the above appeal by way of appeal. We have been taken through the statement and evidence recorded by the Court. Our attention was also drawn to the judgment passed by both the Sessions Court as well as the judgment passed by the High Court. The learned counsel for the appellant drew our attention to the statement of the girl Bimla (PW-5) and also drew our attention to the

> evidence of the doctor. We have carefully analysed the evidence tendered by the prosecution. In our opinion, sufficient evidence was tendered by the prosecution to prove the guilt of the accused. However, at the time of hearing it is brought to our notice that the girl has now got married and living with her husband. The said statement is also ratified by the evidence of the father of the girl. Having regard to the peculiar facts and circumstances of the case, we are of the view that the sentence imposed by the Sessions Court and as affirmed by the High Court under Sections 366 and 376 of the Penal Code is on the highside. In our opinion, ends of justice would be amply met if we reduce the sentence to three years. We do so accordingly."

In the case of State of Chhattisgarh Vs. Lekhram (2006) 5 SCC 736 the Hon'ble Apex Court reduced the minimum sentence under Section 376, IPC, of seven years to a sentence of one-and-half-year imprisonment, already undergone by accused therein. Para 16 of the judgment reads as under:-

> "16. The prosecutrix was a mature girl. She was married. She spent a few months in her in-laws' place. The respondent was working in her house. They, thus, knew each other for a long time. The prosecution evidently could

> not prove its case that she was enticed away from the custody of her guardian by the respondent on a false plea that he would marry her. She denied the said suggestion as presumably she was aware that she being married, the question of her marrying the respondent again may not arise. She lived for some time with the respondent in a rented house. Both the courts proceeded on the basis that she was a consenting party. The occurrence took place in the year 1986. The respondent preferred an appeal before the High Court in the year 1987. The same remained pending for about 10 years. The special leave petition was filed by the State 230 days after the prescribed period of limitation for preferring such appeal. The delay in filing the special leave petition, however, was condoned. He is said to have remained in custody for about one-and-a-half years. In the peculiar facts and circumstances of this case and having regard to the facts that both the courts have arrived at the conclusion that she was a consenting party, in our opinion, it may not be proper to send the appellant back to prison."

In view of above discussion and reasons and after considering all the facts and circumstances of the case as well as the case law cited at the Bar, as referred above, I think it fit and proper that ends of justice will meet in case the sentence of imprisonment awarded by the trial court under Section 376 (2), IPC,

is reduced to a period of 7 years RI with the fine.

Consequently, the appeal of the appellant is partly-allowed. The order of conviction passed by the trial court against the appellant is upheld; but, the order of sentence passed by the trial court is modified and the sentence of imprisonment awarded by the trial court against the appellant is reduced to a period of 7 years rigorous imprisonment with a fine of Rs.5,000/- (rupees five thousand); in default of payment of fine, to further undergo three months simple imprisonment.

(Narendra Kumar Jain) J.

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